

COMMITTEE ON ADMINISTRATION/INFORMATION SYSTEMS

August 27, 2001

4:30 PM

Chairman Gatsas called the meeting to order.

The Clerk called the roll.

Present: Aldermen Gatsas, Pariseau, Hirschmann and O'Neil

Absent: Alderman Thibault

Messrs: Chief Driscoll, Lt. Winn, R. Tilsley, Jr.

Chairman Gatsas addressed Item 3 of the agenda:

Copies of communications from Jacklyn Desfosses, Tim Mark and Aldermen Pariseau and Vaillancourt relative to concerts at Singer Park.

On motion of Alderman Pariseau, duly seconded by Alderman O'Neil, it was voted to receive and file this item.

Chairman Gatsas addressed Item 4 of the agenda:

Communication from Attorney Roy Tilsley, Jr. requesting a hearing before the committee on behalf of Cirrus Entertainment Group, LLC relative to the denial of a permit for the September 15, 2001 concert at Singer Park featuring the band Godsmack.

Chairman Gatsas stated why don't we start off with the Chief.

Chief Driscoll had the Clerk distribute a handout. I am here today with Deputy Dale Robinson seated on my right. On my left is Lt. Jim Winn. David Mara is also here with me from the Police Department. You do have a packet of material that was put together today. There are basically five things there. There is a list of the concerts with a notation relative to what we believe the attendance has been, as well as the number of noise complaints. I would like to go through that with you later on in the presentation. There is my notification letter dated 8/16 advising that I would not sign the application. There is the Cirrus Entertainment application for the September 15 Godsmack concert. There are applicable sections to the Business License ordinance to which you may want to refer, Section 110-2 and

there are Police Department internal notes and memos. The reason they are included is because there was a request by the press that they be released. We did release them and in case they are referred to I wanted you folks to have a copy also. As you folks know, there have been significant articles and reports on what is going on relative to my denial in the media. I would ask you to just give me 15 or 20 minutes working with Deputy Robinson and Lt. Winn and we would make a presentation to you and I hope you would then understand my reasons for refusing to sign that permit.

Chairman Gatsas asked how about if we give you 10 to 15 minutes.

Chief Driscoll answered I will hurry, Sir. I will focus on three issues – the significant negative community impact, the noise and the unsuitable concert venue for this type of concert. I guess I would start by asking you to think back to April 12 of this year. At about 3 PM I met with a number of other community leaders – the Mayor and a number of Aldermen with Mr. Comstock and others here in this Chamber when they announced an eight concert series. I was then very excited about bringing back concerts to Manchester, as well as our opportunity to work with those gentlemen and see this whole plan go forward. We met with them then and have met with them subsequently a number of times to do operational planning for parking and traffic control, as well as the staffing for events. That has gone quite well. The first concert was on, and I would refer you to the first page of that packet, the first concert that was scheduled was June 9. It was the Charlie Daniel's Band. It shows the attendance as a question mark and the number of noise complaints we had were 12. That concert went off pretty well but there were a number of people from the community asking the Police Department what about the loud bass and what about the noise that is impacting the west side and the north end as well as the central part of the City. For that reason I attended, and you will see a star next to June 19, I attended the June 19 Poison/Quiet Riot concert to get a first hand view of what the noise levels were. I not only attended it, but that was also the night of the West High School graduation. I went to that location to try to sense the impact on that event. I made a circle around the City to determine what I considered to be reasonable and what I considered to be unreasonable and how it impacted our community. We did receive 35 complaints on that concert at the Police Department. It was my judgement at that time that although 35 complaints is a lot, that was not unreasonable. The level of noise which I could hear at different locations throughout the City, as long as it got over at a reasonable period of time, I thought that concert met the balance that the City should be looking for and that was reported. The following concert I did not attend, June 29. There were 5,000 people in attendance and 32 noise complaints. The July 4 concert I didn't attend. There were 5,200 people in attendance and the number of complaints were down. There were fireworks involved in that but once again I thought that we were kind of finding that balance between having concerts

in the City and keeping the community happy with some control on the noise. On July 22, the Mudvien/Slipknot concert occurred. There were 10,367 people there. That was the official count. I did attend that concert. We had approximately 100 noise complaints and from my perspective that is the day the wheels came off. I did, along with Deputy Chief Duffey who is not here tonight, make two circles of the City to try to determine the impact from this concert on our community. In Stark Park I could significantly hear what was being said. I had spoken with people as far away as Hooksett who could hear the bass in their residences. On the West Side you could clearly hear very audibly what was being said. As far up as McIntyre Ski Area you could hear what was being said. However, I would tell you that as I made the tour over the Queen City Bridge I could hear the music in the background but I could not hear the words. It is clearly an east/west/north end issue. However, there are some complaints from the south end also. At that time, I had a conversation with Mr. Comstock on that particular evening and he told me about his anticipation of bringing a ninth concert for September 19, a Godsmack concert, to the community and that they were very similar to Slipknot. I should add that up until the Slipknot concert I had never heard of Godsmack. I don't think I have ever listened to any of their music and I certainly don't pretend to be a judge of what good music is. I would certainly tell you my testimony is no reflection of the quality of their music because I, quite frankly, don't know. Shortly after the July 22 concert I asked Lt. Winn, who is with me here tonight, to look into and do research on the Godsmack band. I also asked him to notify Cirrus Entertainment that a permit might be difficult for me to sign off on if, in fact, they were anything like the Slipknot concert. Lt. Winn did that research and he is with me and I am sure he would be pleased to report that information to you.

Lt. Winn stated as the Chief said, on July 23, the day after the Slipknot concert, he did contact me. He was concerned after his conversation with Mr. Comstock about the type of band that would be coming to Manchester – Godsmack. He was concerned that we may see the same type of activities from the band and from the fans. As a result of that, the Chief directed me to do some research on Godsmack's activities and the activities of the fans at shows. Often times in police work when we are trying to find information about activities such as concert, what we like to do is hear from other police agencies. We feel that they are a real good source, from our standpoint, in terms of finding information and giving us some insight on what our security needs will be – problems that may have occurred and how to best deal with these problems in advance. As a result of that, I did contact five police agencies and what I did is I contacted agencies in the northeast. At the time of the July concerts, Godsmack was actually on a tour out on the west coast so what I did was I went back to their concert path in March, which brought them here to the northeast. I thought it was important to find out what was happening locally as compared to what happened in California as an example. I contacted the University of New Hampshire Police Department at

Durham, the University of Massachusetts Police Department at Amherst, the Utica Police Department in New York, the Sheriff's Department, which has jurisdiction in Hershey, PA and the Worcester Police Department. All five police agencies worked police details at concerts in their particular community during the month of March. This is what I found out regarding the activities. Regarding the Godsmack band, I was told that they could be best described as a high energy, very loud heavy metal rock band. I was also told by all counts that band members use profanity and are vulgar during their concerts. I also came to find out that their CD's, some of their CD's are packaged with the parental warning labels that we are all familiar with. Regarding fan activities, I was told on all accounts that mosh pits do occur. At the Slipknot concert, there were 37 injuries as a result of the mosh pit activities. Also body surfing occurs. Women remove their shirts and expose their breasts by all accounts at these past concerts from the five agencies I contacted. I found that the average age range of the people attending the concerts were between the ages of 18 and 22. After getting this information, I specifically focused on Durham, New Hampshire. The reason I focused on Durham was because that was the venue that was closest to Manchester in proximity. I thought that would be a good way to gauge what we could expect here in Manchester. Speaking with Lt. Dean of the University of New Hampshire Police Department, he told me that Godsmack played at UNH in March of this year. Now his department made 37 arrests. The arrests were for alcohol and drug violations. There were also arrests for people acting disorderly, fighting and exposing themselves. Additionally I want to point out that at that concert alcohol was not sold. I concluded, after checking with these agencies... basically I would sum it up to you this way. All of the people that I talked to that have knowledge of Godsmack and when I say people I am talking about people in the Police industry who have knowledge of Godsmack and who have knowledge of the folks who played at Singer Park on July 22, Linkin Park and Disturbed and Slipknot, I was told that we could expect more of the same types of behavior from Godsmack and their fans that we saw on July 22 at Singer Park.

Chief Driscoll stated if I could refer you now to the letter that I wrote, it should be the second page in your packet and I would refer you specifically to the second sentence in that paragraph in that I identified six areas and they are listed there starting with potential attendance, nature of concert, attendee arrest history, public safety impact, potential noise level and overall community impact. I would like to just briefly go over each one of those because those, after receiving the information from Lt. Winn and working on personal knowledge that I had gained at the two concerts that I attended and the observations that I have made, I felt that it was important to summarize these for you. The potential attendance at a Godsmack concert we believe will be a sell-out. That park holds 10,500 people. Lt. Winn has described the nature of the concert. It is an active and participatory crowd. There will be all of those issues that he discussed. The arrest history.

UNH he had told you had 37 arrests. Many of the other locations adopt a policy of containment but that is not our policy. I will never, as the Chief of Police, tell my police officers to avoid making arrests. They go there and use their judgement, their maturity, their skills and their experience to do what they think is right. However, when there are 10,500 people, many of whom have been drinking, they tend to overlook things so I think that we could certainly expect that type of behavior. Public safety impact. Certainly there is the potential for injuries at the Slipknot concert. There were 32 people treated by their first aid folks. There were 8 people transported to the hospital. There would be a significant draining of our resources, our public safety resources, in that if we have to respond there to assist the ambulance, to take the people off of Elm Street, to send our wagon down there, there are a variety of ways that our resources would be sent in that direction. Certainly officer safety. Any time you have 10,000 people together in one place, officer safety becomes a concern. Now I am fully trusting and have the greatest confidence in my officers, but would not want to create a situation to put them in danger. It is a lot easier to handle the horse while he is in the barn as opposed to letting him out of the barn. Potential noise levels. Certainly this is a high-energy rock band. The volume and the bass we would expect to be greeted with the same huge number of complaints and impact on the East Side, the north end as far away as Hooksett and on the East Side Center City. It is very difficult for me to define what is unreasonable when it comes to noise levels. People talk about decibels and I have not measured that and I don't come here telling you that I am any expert on decibel levels. What I can tell you is that I attended two concerts. One I thought was reasonable and one I thought was very unreasonable. I am told that the anticipated Godsmack concert will be in the unreasonable category. Finally, the number of complaints, I think that I have discussed that. There is a significant difference in the number of complaints on what I would classify as a reasonable concert and what I would classify as an unreasonable concert. After considering those six issues, it was my judgement that my responsibility as Chief of Police required me to notify the appropriate parties that this concert, in my opinion, should not occur. I did that in the August 16 letter. It is my opinion that this concert and this whole issue is not about the First Amendment. It is not about "Live Free or Die." It is not about individual rights. It is not about me deciding and it is not about censorship. What it is about is money and profit. It is about community standards. It is about negative community impact and it is about a wrong location for that type of concert. Certainly to sum up here and I will try to meet your five or ten minute deadline, but I would like to read you the last paragraph of my letter, which simply says, "considering the totality of information presented to me, it is my belief that this concert venue under these circumstances is not a suitable host site for the proposed Godsmack concert and will have a significant negative impact on a large portion of our community. For this reason the Manchester Police Department will not sign off on the September 15 concert permit application." That is the position of the Police Department. I think that it

is a position that the community supports. I think it is a position that I had to take as the Chief of Police based upon the impact to our community. I guess that concludes our presentation and I would be pleased to answer any questions the Committee may have.

Chairman Gatsas asked, Lt. Winn, the five venues that you checked on from previous concerts were they indoors or outdoors.

Lt. Winn answered two of them were indoors and three were outdoors.

Chairman Gatsas asked which ones were outdoors.

Lt. Winn answered U-Mass, Amherst was outdoors. Utica, NY was outdoors and Hershey, PA was outdoors. Worcester and UNH-Durham are outside.

Chairman Gatsas asked those outdoor venues, are they within the City confines or are they outside.

Lt. Winn answered Hershey, PA and U-Mass, Amherst are further out and would have less of an impact on city life. I am not sure about Utica.

Chairman Gatsas asked did you check if there was a concert held in Saratoga, NY.

Lt. Winn answered I did not.

Chairman Gatsas stated this seems to be a new concert on this concert list.

Chief Driscoll replied yes it is. It is an add-on if you will. It was not part of the eight that were previously proposed at the press conference and I don't think the Police Department had any knowledge of it until about July 22 when we learned that they were going to try to bring another hard rock band to Manchester.

Alderman Pariseau stated I don't want you to take this the wrong way, Chief, but was your decision based on your perception that the community would support your decision.

Chief Driscoll replied certainly not.

Alderman Pariseau responded well you stated that in your last statement and that led me to believe that was the whole gist of your denial.

Chief Driscoll stated absolutely not. I tried, and maybe I should clarify that, I tried to make the decision that I believed in. I made the decision after receiving input

from my staff. I made that decision the following day. I notified my staff and the day after that I notified the Police Commission, which voted to support the decision. Certainly I listened to the community but I don't think it was a decision made on popularity or what the community would think. I think we have received literally hundreds of calls relative to this issue and the concern, but certainly we didn't keep score and tally the votes and go with the popular decision. We made the decision that we believed was certainly in the best interest of the community and the decision that I believe, as Chief of Police, you pay me to make.

Chairman Gatsas stated just so everyone knows, everybody can participate in the discussion here but there will only be four voting members.

Alderman Levasseur asked, Chief, have you ever gone to a Godsmack concert.

Chief Driscoll answered no, Sir.

Alderman Levasseur asked, Jim, have you.

Lt. Winn answered no, I have not.

Alderman Levasseur asked have you played any of their CD's or albums at home.

Lt. Winn answered I played two of their songs last night.

Alderman Levasseur asked were they records.

Lt. Winn answered it was off the Internet.

Alderman Levasseur asked, Chief, have you listened to their music.

Chief Driscoll answered no, Sir.

Alderman Levasseur asked did you ask if there had ever been any other concerts at Durham that had arrests. Did you ask about any other concerts when you called around?

Chief Driscoll answered no. I think we were focused, and I shouldn't speak for Lt. Winn, but I think we were focused on the Godsmack concert and the impact of Godsmack on that community and on that public safety agency.

Alderman Levasseur stated you will probably agree with me that each community has different standards and their police forces are probably different from each other.

Chief Driscoll replied certainly.

Alderman Levasseur stated and different police forces have different kinds of rules and different levels of tolerance for concerts and such.

Chief Driscoll responded I think they all have basically the same rules. I think they all follow the statutes and relative ordinances, but certainly the level of enforcement could be different.

Alderman Levasseur asked as far as Durham goes, doesn't Durham have one of the greatest reputations for arresting pretty much any time they see any kind of infraction.

Chief Driscoll replied I can't answer that. I don't know.

Alderman Levasseur stated I am talking more about the concert because I will say that I went to see the Godsmack concert on Friday and I don't know if you want me to weigh-in on that now or would you rather I wait until later.

Chairman Gatsas replied let's wait.

Alderman Lopez asked, Chief, did you get any reports from the concert that was just held in Massachusetts.

Chief Driscoll answered no I didn't. I knew about the concert and I chose not to send anyone. I did read the account...I am sure an unbiased accurate account in the *Union Leader* today but beyond that I don't know.

Alderman Vaillancourt stated just to follow-up on the Chairman's question about the concerts being indoors or outdoors and the type of venues, I hate to ask you a hypothetical that you may not have considered but do you believe your decision would have been the same had this request been for the civic center say next December when it is open.

Chief Driscoll replied actually that is not a hypothetical because that is something that my staff and I discussed. We discussed if it were, in fact, at the Airport on a runway what would be the impact and would the facts and circumstances be the same or would they be different. If it was an inside venue would it be the same or be different. Our conclusion and my conclusion certainly is that that is a whole different set of circumstances that would have to be analyzed entirely differently and perhaps that would be a very suitable concert for the civic center. In my letter in that last paragraph that I just read to you, I tried to point that out in a round

about way that we don't challenge Godsmack or what they do or how they sing, we simply think that the venue is not a proper host site as a result of the huge community negative impact that it has.

Alderman Vaillancourt asked so that would add credence to your idea that this is not about the first amendment or censorship, it is about a proper venue.

Chief Driscoll answered absolutely.

Alderman Levasseur asked has Godsmack been banned for any other town or city or from anywhere else they have tried to get into.

Chief Driscoll answered I have no idea but I would suggest that we are not trying to ban Godsmack, we are simply saying that the venue is inappropriate for that band under these circumstances.

Alderman Levasseur asked so your answer is you don't know if they have been banned from anywhere else.

Chief Driscoll answered no, Sir.

Alderman Shea stated one of the things that you mentioned, Chief, was that this was added on as of July 22.

Chief Driscoll replied on or about July 22 is when the Police Department became and I specifically became aware that they were thinking about having another concert and that they intended to negotiate that if they could.

Alderman Shea asked so this was not on the original list that was approved by...who approved the original list of concerts.

Chief Driscoll replied I am not sure that we approve anything. At that press conference they presented a list of eight concerts and they had apparently signed contracts for those. I don't think we have ever been in a position where...we certainly go through the licensing process and have the opportunity to place conditions or restrictions on the license but up until now we have never felt the need to approve or deny.

Alderman Shea asked was the approval given through the City Clerk's Office or through this Committee, Chairman Gatsas.

Chairman Gatsas replied I don't think it was ever presented to the full Committee.

Alderman Shea asked so in other words the Godsmack concert was not approved by anyone.

Chairman Gatsas responded not to my knowledge. I don't know about the City Clerk.

Deputy Clerk Normand stated the way the process works is they apply individually for each concert. We don't approve a whole schedule of concerts for a given season, it is individually. This application was not presented to our office until July 26.

Alderman Shea asked so this was really an afterthought predicated upon perhaps different considerations made by the group headed by Mr. Comstock in terms of what the relationship may have been between one concert and another concert and the impact that it may have on the company running it I would assume. Is that correct?

Chief Driscoll answered I guess that is fair.

Alderman Levasseur stated I am worried about one sentence in the letter that you sent out to us dated August 16. It says, "this community has recently experienced a similar concert at that venue." When you say similar, do you mean that Godsmack is similar in content or...that word similar makes me nervous because Slipknot and Godsmack are not similar. What do you mean by similar?

Chief Driscoll replied I guess when I say similar I am talking about the...I guess it is the impact on the community as opposed to what the...

Chairman Gatsas interjected I guess they are both hard metal. Alderman Levasseur asked are they similar or not?

Alderman Levasseur stated well he is the one who decided not to let Godsmack in and he is the one who came up with the word similar, Mr. Chairman, and the word similar to me lends itself to getting the City in very serious trouble. If you make a decision not to allow Godsmack to come in and they are not similar to Slipknot then I think we have gotten ourselves into some hot water here.

Chief Driscoll replied okay and I guess I would refer back to what Lt. Winn said and I agree with that. They are both high energy, very loud rock bands and there will be mosh pits and all of the same types of challenges that presented themselves in the Slipknot concert. From my perspective, they are in the same category.

Alderman Levasseur asked were you at the Slipknot concert, Chief.

Chief Driscoll answered yes, Sir.

Alderman Levasseur stated so you know what Slipknot was all about. You saw it so you know what Slipknot is about but you said you haven't been to a Godsmack concert so I am worried about the word similar. Are you getting your information just based on what you heard from the surrounding communities?

Chief Driscoll replied from Lt. Winn and the research that he did that I asked him to do.

Alderman Levasseur stated, Lt. Winn, you said that you listened to the Godsmack songs last night but you hadn't listened to them when you made this report though.

Lt. Winn replied no, I had not.

Alderman Vaillancourt stated just for the gratification of my colleague from Ward 3, I guess the word similar does have many nuisances. If somebody has a gun to my head or a knife to my throat or a billy club ready to hit me over the head, I guess they are not totally similar but they all pose a similar threat to my safety. Does that help any?

Chief Driscoll replied I guess. From my perspective I am not a music connoisseur. I cannot dissect rock music. From my perspective they are similar and we could expect the same challenges from a public safety perspective.

Alderman Pariseau asked, Chief, is your denial based on a potential for problems. I don't want to use the word fear but I guess I will have to. Are you afraid that if Godsmack goes on as scheduled that the Police Department would be challenged?

Chief Driscoll answered certainly the Police Department will be challenged, but I would tell you that the men and women of the Manchester Police Department are up for that challenge. I guess the issue is at what cost. What is the price we will pay? I think a better question is what is the cost to the community and how much of that significant negative impact will the community have to endure and at what point do I raise my hand and say I don't believe that this is something that I should sign-off on based on what I have seen and what I have been told to expect. Once again, my job is to be proactive and to practice community policing and to attempt to identify issues before they become problems. That is what we have done here tonight.

Alderman Levasseur asked how many arrests were made at the Slipknot concert.

Chief Driscoll answered I don't know. An insignificant amount, Sir.

Alderman Levasseur asked is it one.

Chief Driscoll answered one, two, four or something like that.

Alderman Levasseur stated one arrest and it took 35 minutes to get all of the people at the concert out of there. Isn't that correct?

Chief Driscoll replied yes, I guess.

Alderman Levasseur stated 35 minutes to get 10,000 people out of the City and one arrest so when you talk about impact you are talking about what kind of an impact.

Chief Driscoll replied I am talking about community impact. The number of calls from people throughout our community that were concerned about the loud noise that they heard as far away as Hooksett on the east side, the west side and the north end.

Chairman Gatsas called Attorney Tilsley forward.

Attorney Roy Tilsley, Jr. stated after watching you guys in action for three meetings now it is nice to finally get a chance to address you in person. I am Roy Tilsley from the Manchester law firm of Kelley & Tilsley. I am pleased to appear today on behalf of Cirrus Entertainment Group, LLC. Our position consists of three points: 1) there is no evidence that would show that the proposed Godsmack show would pose any threat or danger to the community; 2) the City's action constitute a violation of the First Amendment by denying a license for Godsmack to perform in a public forum due to the nature of the performance; and 3) that the City licensing system creates an unlawful prior restraint on First Amendment expression. I submitted a Memorandum of Law today at the City Clerk's Office and I believe it has been distributed to all of you. I will try not to rehash what is in there, but I urge you to also look it over so you understand where we are coming from. I will make a brief presentation today and then I have three or four people that I am going to ask to come to the microphone and address you all very briefly about some of the concerns that they have with the City's actions. As you all know, one of the main reasons we are here today and this was set forth in the Chief's denial letter, is as the result of the Slipknot concert on July 22. I would like to begin by reviewing what happened at that concert. There were absolutely no public safety issues at that show. There were 10,367 people in attendance. There were 20 Manchester police officers on duty. There were 125 private security officers on the scene and there was one arrest for a non-criminal violation

of disorderly conduct. I would like to present to you information that I have obtained from the City Police Department regarding their detail that night and in it is contained an arrest report where one person was arrested for a disorderly conduct violation. A violation is not a crime. There were no criminal arrests on the night in question. If you have a chance to review the arrest report, you will see that what happened was that the private security guards were having some difficulty removing this individual and at their request the police assisted and ultimately arrested this one person. It is our belief that one arrest out of 10,000+ people indicates that the crowd was orderly, it was well behaved and that my client provided appropriate security at that show. In addition, you are also receiving the complaints that were logged by the Manchester Police Department during the show for noise. There were only two complaints logged during the show. One at 10:08 PM and one at 10:20 PM. This is on the last page and it notes right there that the show was over by 10:37 PM. I would also like to submit and I don't believe it is part of what the Chief gave you earlier, a detailed report that I believe was prepared by Lt. Winn. This is the report that the supervising officer who was present at the detail presented, I assume, to his superiors after the Slipknot concert. In that report he notes that, "it worked well to have security escort problem fans to the officers. The 125 security guards were in the crowd and if there was a problem they removed the person, brought them to the police officers and this worked well." They note that at the Slipknot concert the crowd did not consume as much alcohol as had been consumed in the previous concerts. Lt. Winn notes that it went very well from a security standpoint and that there were no issues between security, staff and promoters. I would say to you that if the Godsmack concert is similar to the Slipknot concert, as alleged by the Chief, you have very little to worry about from a public safety perspective at this point. You should also note that there is no mention in this detail report of any lewd behavior occurring inside the concert venue and there is no mention in this report that there was any problem with women in the crowd taking their tops off during the concert. I would respectfully suggest to all of us who were not at the Slipknot concert, myself included, that if these behaviors were as wide spread as has been alleged in the press over the last month, you would expect to find them in Lt. Winn's report. They are not there and I would suggest that that simply was not a problem at the Slipknot concert. I will have the outside security company speak briefly when I finish and they can tell you about some of the things that they do at these concerts to make sure that they proceed in a safe and orderly fashion. I will assure you that the security people are encouraged to detain anybody or stop anybody who was engaging in lewd behavior during the concerts. The only other issue the Chief raises with the proposed Godsmack concerts is the language and the volume of that concert compared to the Slipknot concert. I want to be clear that we are dealing, and I think Alderman Levasseur pointed this out, we are dealing with two different animals here. Godsmack is not the same type of band as Slipknot. While Godsmack is admittedly a hard rock type of band, they are

considerably more mainstream than Slipknot and while I will not deny that Godsmack music might contain an occasional profanity, they do not have repeated profane tirades like Slipknot did during their show. Since most of the Board members I don't think have heard Godsmack, I am going to provide you with two things. Number one, I am going to provide you with the lyric sheet from Godsmack's most recent album called "Alive". I pulled this off the band's website. I will admit that there are several songs, which contain one profane word. Most songs do not. I am also, for your listening pleasure, going to provide each Board member with their very own copy of the "Alive" CD so that you can hear for yourself what this music sounds like. I don't expect that you folks will like it all that much, but I think you will see that it is not the type of music that was heard when Slipknot played on July 22.

Chairman Gatsas asked I assume that those tapes are merely evidentiary and not gifts.

Atty. Tilsley answered they are not gifts. Godsmack has been performing throughout the East Coast over the summer months playing almost all of the outdoor amphitheaters up and down the East Coast with no problems. As you know, Alderman Levasseur attended a show at the Tweeter Center this past weekend in Mansfield, MA. The band played two nights there. I am not aware of any problems at that show. I have checked the *Boston Globe* for the last two nights. There was a review of the show but there was no mention of any problems concerning arrests, riots, language or any other type of law enforcement issues at those Godsmack concerts. Given that the Slipknot show did not create any documented public safety problems, the police cannot assume that Godsmack will have any problems with public safety, volume or profanity. The Chief simply cannot rely on the Slipknot show to deny this permit. I am sure there are Board members asking themselves well why do these type of shows? Why can't you guys do middle of the road shows that don't offend anybody? It just doesn't work that way in this business. What my clients are faced with is trying to get a new venue established on the concert scene and that is going to take three years to get to the point where people know automatically that every summer there is going to be a concert series at Singer Park. If they do seven, eight, nine or ten concerts a summer, it is a very rare person who is going to attend all of those shows. People simply can't afford to and even if they do all shows with the music that you like...if you are a blues fan they could do ten blues shows but those people still can only afford to go to one or two shows. They have to do shows that appeal to a wide variety of potential audiences and that is what you have seen this year. They have done a couple of oldies shows. They have a blues show coming up. They have done a couple of country western shows and they have done a couple of shows that appeal to young kids. As the age old rock and roll history goes, shows that appeal to young kids usually don't please their parents and the older people in

the community. For my client's venue to be successful, they simply cannot write off the audience of young kids who want to see this type of music and if we can do it in a safe fashion, we have every right under the First Amendment to do so. Now we know that the Chief researched Godsmack as part of the basis for his decision and I believe the Board has in the Chief's handout a copy of Lt. Winn's memorandum to the Chief regarding his research on Godsmack. I would submit to you and I will go over it in a second that his research does not support his conclusion that Godsmack will be a problem in this community. As we know, Lt. Winn contacted other police departments. His letter mentioned something about profanity, but there is no mention of how much of that there is or whether there was any problem with that. He mentioned that women supposedly took their shirts off at these shows, but there is no mention that the band incited them to do so. If people in the crowd chose to do certain things, you can't hold the band responsible for that. That is basic First Amendment law. There is no evidence to suggest that this band is going to incite the crowd into unlawful behavior. The fact is that if there are ordinance violations during the show, including people taking their shirts off, the Manchester Police can enforce City ordinances or State law at the time those things happen. All of the police departments that Lt. Winn spoke to except the University of New Hampshire have contingencies to enter the crowd if serious violations occur at the Godsmack shows. There is no indication that any of those police departments ever had to put those contingencies into effect and enter the crowd. Other than the UNH information, there were none to a few arrests at all of the other departments that Lt. Winn spoke to. Now there were 37 arrests at UNH because they take a more active approach. There is no indication in Lt. Winn's report as to where those arrests occurred, whether they occurred inside or outside the venue. Later on in the report there is some information from Lt. Lussier on Page 3 who indicates that a lot of the arrests took place in the parking lot of the venue. Most of the arrests at UNH were for drug and alcohol violations and the law is clear on the First Amendment context in the Cinevision case in my memo that a city licensing authority cannot use potential drug use as a basis to deny the first amendment right to perform. There is no indication that there were any public safety problems at UNH and the fact that there is drug or alcohol use can be dealt with by the police department when and if it happens. It cannot be the basis for denying the permit. There is no indication in any of the information from the Manchester Police Department that the Godsmack performance will be directed to inciting eminent lawless conduct and would be likely to produce such actions as is required for a content based restriction under the First Amendment. In Lt. Lussier's report on Page 3, he notes that the Hell's Angels apparently went to the UNH show and there were 15 Hell's Angels there. There is no indication of any problems with those people at that show and that certainly is an inappropriate factor for this City to be looking at. Finally, I would refer you to the last page of the memo to the Chief. There are some notes there with the initials J.S. I believe that is from Sgt. Stankiewicz, who essentially supports the concert. He indicates

that his Godsmack research is as follows. Limited profanity, three of the four band members are clean cut, married with kids, they have respect for the Manchester Police Department, that Hell's Angels don't come as groupies or die hard followers, but simply to see the show, that they are less profane than Slipknot and that many Manchester police officers listen to their CD. I would suggest to you that this is not the type of information that would justify denying this band the right to play in this City. As the Board has probably heard over the course of the past few weeks, Godsmack is a local band. Most of the members grew up in the Boston area. Three of the members apparently now live in the Southern NH area. One of the members is related to a Manchester police officer by marriage and there is no indication that in making their decision here that the Chief took any action to check out this firsthand connection to the band and speak to the officer who is related to the band member or even try to speak to the band member himself. It is clear that the police were looking for negative information to deny this concert. You will note that this procedure about doing all of this research doesn't seem to apply to any other show that has happened at Singer Park this summer. I have no indication that the Chief has done similar research for BB King or any other act that is going to play here. Why did he choose this show to suddenly conduct research about problems with the band? I would point out that when this band was coming up through the ranks they played Manchester a number of times, I believe at the Spider's Web next to the District court house and again we have no indication from the Chief that he had any problems when Godsmack was playing in Manchester regularly. There is no indication that the band will insight the type of unlawful behavior that would violate the First Amendment. The Chief looked at the reasons in his denial letter. I want to go through those reasons myself and explain to you why they do not support his decision. First of all, the potential attendance. It is unlawful for this City to ban a performance based on who might attend the concert. That is established in the Cinevision case in my Memorandum of Law. He notes the nature of the concert. To have a content based restriction because somehow the performance isn't going to be satisfactory to the community. It is unlawful to ban a performance from a public forum due to the content of their performance and that is the same case, Cinevision. The Chief notes the attendee arrest history. This is pure speculation. How the Chief knows who will attend and what their arrest history is I don't know. I do know that at a show that was probably much worse from a public safety danger perspective, Slipknot, one arrest. The Chief notes the public safety impact. This is purely speculation. There were no public safety problems with the Slipknot performance. The research on Godsmack suggests otherwise. All of the other police departments note drug or alcohol or minor arrests. I will note that in terms of the use of ambulances, we have a private contract with an ambulance company and we hold no City ambulances up during these shows if there are problems with injuries in these types of crowds. The Chief notes overall community impact and that it is not in the best interest of the community to do this

show. This standard is too vague. The Southeastern Productions case establishes that overall community impact is not a basis to deny a permit. Finally, we have the potential noise level. This seems to be the only issue on which the Chief can really rely with any kind of meat to it, but we have no information as to how loud Godsmack will be. We have no information to suggest that they will be louder than any other band that has been given a permit to play in this City. The First Amendment makes clear that the availability of an alternative venue is not a factor in First Amendment analysis. The fact that they could play the Airport or the civic center is not a relevant factor for you folks to consider under the Cinevision case. My client is taking steps to reduce the noise impact to the community because my client needs to do that to be a good neighbor. My client has engaged an acoustical engineering company to come out to the site, look around and see what changes could be made to mitigate the sound in the community. Admittedly some of those changes may be long-term. There are things we can do short-term in terms of putting the sound system down rather than out to try to have the sound not carry so far. Certainly, we will implement whatever immediate changes we can to mitigate the sound problem. My client would agree to a reasonable decibel level on the Godsmack concert consistent with what happens at other outdoor amphitheaters like the Tweeter Center in Mansfield, MA. It is our understanding that the standard in the industry is 108 decibels at the farthest corner of the property away from the stage. We would be willing to abide by that for the Godsmack concert in order to assure that the noise problem will be minimal. As pointed out in my memorandum, for First Amendment purposes the issue of obscenity has to be based on an erotic connotation. The use of vulgar words is not a basis to deny a performer that writes a play. Again, we are confident that this band will not be the same type of profane performance as Slipknot. We will certainly do our best to encourage the band to tone it down as much as possible but the fact is from the First Amendment perspective, the City cannot necessarily deny a permit because the band may use vulgar language. The solution here is sound containment. The last thing I want to say in closing is to go over some of the cases where the First Amendment has upheld certain types of performances, which are much farther out on the continuum than we are here with the Godsmack concert. In the Southeastern Promotions case, they allowed the play, Hair, to be performed in a public city-owned forum, amphitheater despite the fact that it contained nudity and sexual content. In the Nosnik case, again in the memo, a drive-in theatre was allowed to show sexually explicit nudity despite the visibility off of the theatre premises. We don't approach those types of extremes and the reason I raise those is to show you that the First Amendment protects this type of concert performance. I also discussed in the memo and I will skip over it since the Board is anxious to finish, the prior restraint argument that by denying this license in advance of the performance the City has a very difficult burden to clear from a Constitutional perspective and I will simply refer you to the discussion in the memo. Again, I have four people to come up briefly. The real issue here is the volume level of the

concert. This is a new venue. It is a work in progress. We are trying to work things out. We are taking steps to mitigate the sound and we are willing to go with a decibel level that should solve the problem at the Godsmack concert, however, the City Clerk's actions are unlawful and this Board should reverse their decision based on the First Amendment. Thank you. I can take questions now or bring my witnesses up first.

Chairman Gatsas stated you can bring the witnesses up.

Atty. Tilsley stated I would like to ask Mary Annis to come up please.

Ms. Mary Annis, 75 Sprague Street, Manchester, NH stated:

I am here because I am concerned with the cancellation or the denial of the Godsmack concert for the reasons that I have been reading about in the *Union Leader*. All of the future events should not be judged by what happened at the Mudvien and Slipknot concert. Those two bands are to the extreme with their profanity and their lewdness and their appearance. My son wanted to go to their concert strictly to see Linkin Park who does not use profanity but because of those two bands I would not allow him to go. I did allow him to go to his first concert at 3 Doors Down, which was held at Singer Park. Before I made the decision I listened to their lyrics. He was allowed to take some friends. It was a graduation present and everyone knew the rules. They knew what to expect at an outdoor concert. It has been several years since I have been to an outdoor concert but nothing has changed. There has always been drug use, there has always been alcohol and there have always been women who expose their breasts. He knew to expect this. To stop Godsmack from appearing and citing the nudity and profanity and drug use as a reason, I think, is very unfair not only to Godsmack but to the intelligence of those of us who have read their lyrics. I would just like to say that I hope the Board reverses its decision. We don't need another lawsuit and it is an election year so I am assuming that some of this has to do with that. This is my son. He is 14 and he wants to go to the Godsmack concert and it is one way that the concerts in the City bring us together. I don't like their music particularly but I listen to it for his sake.

Atty. Tilsley stated I am going to ask our security consultant, Terry McDaniel from Merrimack Valley Guard Service to testify briefly.

Mr. Terry McDaniel stated I am the Operation Manager for Singer Park security. I think the Slipknot show as far as security goes went fantastic. Again, there was only one arrest. A few people were told not to do things and they listened very well. The Godsmack show...most of my staff have down two of their concerts at the Tsongas Arena in Lowell. They went very well. Again when you get this age group together for a concert you have less problems than you do with an older

crowd and in older crowd I am talking about maybe from 30 to 50 years old. These kids listen to you. They paid money for these tickets and they don't want to be escorted out of the park. We have worked well with the Manchester Police Department and the Godsmack show would have 125 security staff like we did at Slipknot. Are there any questions?

Chairman Gatsas asked how many security people did you have at the 3 Doors Down concert.

Mr. McDaniel answered I think we had about 70.

Chairman Gatsas asked how many did you have at Poison.

Mr. McDaniel answered the same amount.

Chairman Gatsas asked how about Journey.

Mr. McDaniel answered probably about 65 or right around that number.

Chairman Gatsas asked why did you have 125 at the Slipknot concert.

Mr. McDaniel answered because we do 10,000. The standard is one security officer per 100 people. That is what our standard is. We had a little over 10,000 plus we do security in the parking lots also so that is why we had 125. I always meet with the police department before a concert comes up. We talk about where my people are going to be and how many we are going to have. They let me know how many they need and where they are going to be located. We work well together.

Alderman Shea asked do you have arrest authorization.

Mr. McDaniel answered no we don't.

Alderman Shea asked your role is what then.

Mr. McDaniel answered safety and security. If we see something...if there is a fight we break it up and we get the people out of the park to the Manchester Police who are usually at the perimeter.

Alderman Shea asked in other words you break the fight up and you refer them to the police officer.

Mr. McDaniel answered if they are pushing and shoving but if they are swinging and really hitting each other they go right to the police. We usually take them to the police and the police will make the decision on whether to have them go home or arrest them.

Alderman Shea asked do you refer any kind of behavior to the police. In other words if there is some kind of action going on that is obviously not according to the community in which a particular concert is being played, do you refer that particular activity to the police or do you just say well we make a judgement and not do anything in that regard. How does the training of your security officers work in that regard?

Mr. McDaniel answered if it is illegal, we want to report it to the police. We want to take the person to the police.

Alderman Shea asked could you give me a couple of examples of illegal behavior please in your judgement.

Mr. McDaniel answered there were some people who were drinking without wristbands and we took them to the police.

Alderman Shea asked in other words if somebody is drinking you would refer them to the police. You wouldn't know what their age was?

Mr. McDaniel answered some concerts if they have wristbands that mean you can drink. You have to show I.D. and you have to have a wristband. If you do not, you cannot drink. There have been people going to the bathroom behind the stage. We catch them and take them right to the police.

Alderman Shea asked did you refer any at that concert to anyone for illegal drinking.

Mr. McDaniel replied at Slipknot, no.

Alderman Shea asked did you refer any one from any other concert for illegal drinking.

Mr. McDaniel answered sure.

Alderman Shea asked this summer.

Mr. McDaniel answered yes, this summer. I think we got one person.

Chairman Gatsas asked how long have you been head of security for concerts or is this your first...

Mr. McDaniel answered I have been doing concerts for about five years now. Well four years actually.

Chairman Gatsas asked where.

Mr. McDaniel answered most of it was at the Tsongas arena, however, we do private parties. Last weekend we did a party that we had the J. Giles Band at. It was a private party up in Brookline. We do a lot of concerts.

Chairman Gatsas stated you made a statement that older people at concerts are rowdier than younger people. Can you give me an example of that because I think Alderman Shea asked you were there people drinking that weren't supposed to be drinking and did you present any of those people to the police officers there and you said one. You made a statement and I would just like you to delve into what made you think that or what made you come up with that idea.

Mr. McDaniel replied when you tell kids to do something at these concerts, for the most part they do it. We have less problems with kids than we do with adults.

Chairman Gatsas responded give me a for instance. At the Charlie Daniels concert did you have occurrences where adults weren't listening to you that you brought to police officers?

Mr. McDaniel replied yes.

Chairman Gatsas asked how many.

Mr. McDaniel answered I don't have that information with me.

Chairman Gatsas asked for what reason.

Mr. McDaniel answered some were for fighting and some were in seats and they didn't belong in seats and they wouldn't leave. Actually, I had two females that were giving my security staff a hard time and slapped one of them and we asked the police to remove them from the park.

Alderman Pinard asked what kind of training does your staff have. We know the Manchester Police are well trained. What kind of training do your people have?

Mr. McDaniel answered we are not trained like Massachusetts State Police but I train them.

Alderman Pinard asked in what way. You can tell us.

Mr. McDaniel answered we train them in non-violent crisis intervention. We met at Singer Park this year with the new people and went over the whole park, the exits and where they would be stationed. We went over what our policies were, what somebody could be escorted out of the park for, how we would handle certain situations, etc.

Alderman Pinard asked do they go through any physical training of any kind.

Mr. McDaniel answered no.

Alderman Pinard asked if you have a police officer at one end of the park, how does your staff get the police officer if they need him. Do you have radios or anything like that?

Mr. McDaniel answered we have Lt. Winn and Captain Tracy...like I said we go over and have a meeting before the show starts. They place their people all around the park. At the last show, Slipknot, there were 20 officers.

Alderman Pinard stated you are telling me that you don't have any radio communication between Singer Park from one end to the other if an incident happens. I don't think that is right.

Mr. McDaniel replied I didn't say that. The police don't have a radio. I have 30 radios for my staff.

Chairman Gatsas stated the gentlemen that you have as security guards, are they your employees.

Mr. McDaniel replied yes, they are.

Chairman Gatsas asked they are not contract labor, they are employees.

Mr. McDaniel answered they are my employees. Like I said these people that work concerts for me not only work at Singer Park but they have worked at the Tsongas Arena, the Worcester Centrum...I have one here tonight who has worked at Foxboro Stadium. There are a couple of police officers that work for me. These are professional people who have professional lives and they do this because they love the concerts too and they have a good time.

Alderman Lopez asked what age group of security people do you have. You mentioned you had 125 and 65 and so on. Is there a certain age they have to be?

Mr. McDaniel answered they need to be 18 or older. Most of my staff would fall in that old category.

Atty. Tilsley stated next I have Jeff Cohen who provides insurance for my client as well as insurance for Godsmack.

Mr. Jeff Cohen stated we have many categories in the risk management business for bands. I am Jeff Cohen, President of Insurances Honors. We insure about 70% of the world's concerts so I could say that I am an authority on the subject. We have many levels of risk management when we identify a band and that goes on tour history from when the band started to current touring status to the cities they are going to play in to the age of the venues and the security status. Godsmack is what we call a Level 3 band out of a possible five levels. Slipknot is a Level 5. When we underwrite it, when we look at the potential outcome in any kind of situation, again, it is all based on the levels. I would not put the two in any type of a closely knit category other than they are musicians and they all play instruments. There is absolutely noting that Godsmack has had on any of the tour status that we have covered for them that has ever been a major problem or any kind of a real public liability that would be any kind of a serious situation to be concerned with. The Slipknot show at Singer Park was great. I thought it was wonderful - a new venue, a new promoter, a new security staff. I thought it came off without a hitch. As you saw with the public records of the transports and the medical treatments, that is a wonderful show. That was great. Godsmack is nowhere close to Slipknot as far as any kind of a crowd pull potential. It is not going to have the type of problems that Slipknot could have potentially had but did not have up here. Again, this is all from tour history and experience with doing lots and lots of dates with both of these bands.

Chairman Gatsas asked do you cover both Slipknot and Godsmack.

Mr. Cohen answered yes.

Chairman Gatsas asked were you at the Slipknot concert.

Mr. Cohen answered yes.

Alderman Hirschmann stated we are here to really discuss Godsmack and Slipknot. Everyone has admitted that was a mistake. I don't know why you are saying you were happy about that performance. We certainly weren't. I am

reading the Police Department's memorandum to us and it says in fact that 32 people were treated for minor injuries ranging from bumps, bruises, cuts and abrasions. So you are the risk professional for that concert. I don't know if there are any claims from that but my question is...well let's talk about both of them. Is the City held harmless for all incidents for Godsmack and all incidents for Slipknot?

Mr. Cohen replied yes they are 100% indemnified - the City, the park, the non-profit agency, all the Board members and the Mayor.

Atty. Tilsley stated the last person I will bring up is David Welch who is a local resident and attended the Godsmack concert in Mansfield this weekend.

Mr. David Welch stated this is my first time ever testifying in front of the Board here so please excuse any nervousness that I have. I come here today not with any free tickets that were given to me during any promotion that was going on. I paid my \$35 plus the \$7.40 surcharge to attend the concert on Saturday evening in Mansfield, MA. I went with a friend of mine who is an officer with the Bedford Police Department who has been an avid rock concert goer ever since he was a kid and he asked me to go and I said I would be more than glad to. We took the ride down to Mansfield and I figured knowing because all the press about this concert and so on and so forth that I was going to observe the whole thing from taking the ride down to observing the parking lot to waiting in line to see what type of people go in there to the concert itself and so on and so forth. That is exactly what I did. I am here today...you know no one really asked me to be here. I placed a phone call in to my firm in reference to some business that I had to take care of and I explained what I did this weekend to him. Sure enough he said what are you doing this afternoon and I said not much and I said after talking about the concert that I would come here and tell you folks the same thing. Being a life long resident of Manchester, mostly in Ward 12 and the last two years in Ward 1 on Park Avenue and thank you, Alderman, for taking care of a street that we had a problem on and currently I closed on a house in Weare, NH so now I live in Weare. Just knowing my music background attending Manchester High School West and going through four years of the music program and just understanding music in itself, I attended that concert and really had a good time. This is hard rock. It is not really my forte. I listen to other music as well. Just to see everything that was involved in reference to the concert itself, the theatrics of the background to the four band members to the hype of the concert and so on and so forth, I had a real good time. Reading and listening to the press and really seeing what they said versus what I saw is a big difference, whether there was a lot of spin in reference to making this concert not work or what. I attended the concert. I had a great time. We talked about the nudity. As a matter of fact I was in the third row on the left hand side not far from the mosh pit or whatever they call it

and watching security making sure that people weren't on people's shoulders and they kept putting lights down to make sure that people were on the ground level and stuff. There was one girl who got up on some guy's shoulder and took her shirt off and it was funny that during this time there wasn't a song being played and Sully, the main singer of the band was talking and saying different things and that girl was on someone's shoulder exposing her breasts and Sully asked her how old are you sweetie and she said 19 going on 20. He said why don't you cover those up. Here we are talking about the lead singer of the band saying that and that shows you something about the band. We could have got backstage passes. My friend from the Bedford Police Department went to school with one of the guitar players and it was nice to know that you kind of knew someone in the band. My overall experience was that it was a good concert. I saw many age brackets from younger to older having a good time. That was my Saturday night experience.

Chairman Gatsas stated so you woke up this morning and you had a legal question on your mind or you had to get a legal answer and you called our attorney and you arbitrarily get into a conversation about going to a Godsmack concert.

Mr. Welch replied yes.

Chairman Gatsas asked you hadn't read the paper yet.

Mr. Welch answered I had not read the paper before that, no.

Alderman Vaillancourt asked, Atty. Tilsley, do you consider for me to come up and shout in your ear constantly anything I want to shout for two hours...would that be my right to free speech as you read the First Amendment.

Atty. Tilsley answered the First Amendment is clear that a concert promoter and a performer have a First Amendment right to play in a public forum. Singer Family Park is a public forum. The First Amendment applies to my client and to Godsmack wanting to play there.

Alderman Vaillancourt stated my question is this. If I were to come over there right now and scream in your ear for the next 15 minutes would I be abusing my First Amendment rights or not? Yes or no is sufficient.

Atty. Tilsley replied what I am dealing with is what we are facing. I don't know what the law is about someone coming up to me and yelling my ear and I am not going to hazard a guess.

Alderman Vaillancourt asked if I were playing my stereo so loudly at my home that my neighbors called and complained and the police were to come and tell me to shut my stereo off, do you think I should continue to play it that loudly or might I be wise to shut it down a little bit.

Atty. Tilsley answered you would be wise to shut it down because your home is not a public forum.

Mayor Baines stated first of all, David, I am glad that you had a good weekend and I am glad that you consult with your attorney on what you do on weekends. My question is specifically about decibel levels. A lot of us would like to see concerts at Singer Family Park for a lot of reasons. I started to do some research...I had asked Bud Comstock and Chris Morgan to provide me with a list of venues who have struggled with these issues and I have still not received that so I began doing some work on my own. This is a new area for me as Mayor of the City talking to people about decibel levels but I have done some preliminary work that I circulated to the Board this evening and I found out at the Fleet Pavilion in Boston there is a 100 dB level 100 feet mixer, that means 100 feet from the stage if I am correct, A strength. Also, at the Tweeter Center there is 105-decibel level 100 feet from the state A weighted and I wondered if these were very common part of contracts. I also understand that at the Tweeter Center they put a lot of effort into acoustical issues and engineering, which I am very interested in doing in working with both the Riverfront Foundation and the promoters and I am sure the Board would be interested in doing the same. We have not had the luxury of that because the last concert that you have been talking about, Slipknot, I think I am glad to see that everyone is saying that that perhaps was not acceptable. That is the first I have heard that in any conversations. From what I read in the paper people are starting to say they made a mistake. I think that is a great step forward to working with this community on these issues. What I would like to see is obviously some discussion about these restrictions and one is in downtown Boston where they have a 100-decibel level. I have also been told that there are a number of acoustical engineers that people are now trying to put me in contact with so that we can at least enter into what I would consider a very thoughtful discussion on the way we can improve that venue so the things that Alderman Vaillancourt and I think most of us are concerned about despite some of the rhetoric that is out there in the local media and the like about what our concerns basically are is that we want people to have the sanctity of their homes and their yards protected. If I have a child and my standards as a family are that we don't use that language and we don't tolerate that language, I should be allowed to have that respected in my yard, in my home and in my neighborhood. That, at least, is where this Mayor has been coming from on this issue and I would like you to respond to that in terms of these kind of restrictions that are in place all over the country I understand. I think at Meadowbrook they have a 105-decibel level. Again, that is a remote area and I

have been up there to concerts by the way with my daughter. Could you just respond generally about decibel levels and acoustical engineering, which are very much my concern.

Atty. Tilsley stated we have retained an acoustical engineering firm from Massachusetts to come out and take a look at the site. They are the same firm that has worked at the Tweeter Center in Mansfield. I believe it is Cavanaugh & Tochi. We have talked to them about coming out and taking a look at the venue to see what can be done. As I discussed earlier, there are things that we feel we can do in the short term like angling the sound differently that will help. Certainly we will look at whatever long-term things can be done and do whatever can be done to correct the problem. In terms of decibel levels, we have been kind of in the same boat of trying to collect information from our sources in the industry. The standard that we have been given is 108 and that is why I offered that today.

Mayor Baines replied I believe that is high. From what I learned about industry standards, that is on the very high end. Some people have estimated that Slipknot may have been as high as 115. There are also some states like Massachusetts, I think the Environmental Protection Division, has gotten into these issues. I think the point that I want to make with you is I think a lot of people want to be reasonable about this issue and want to have a very thoughtful and reasonable discussion about the issues and I think the way we have gone forth here in creating this situation that exists tonight is very unfortunate in the long term business relationship that we would like to have with Cirrus and obviously the respect that we have for the Riverfront Foundation and if we kept it at the foundation, the basis of the respect for the community, I think we would be having a much different discussion because I am willing to discuss decibel levels. I am willing to discuss acoustical engineering, which would be a long term benefit of that venue as a concert series and that would have been a much better thing to be having than put us in a situation like we are in this evening.

Atty. Tilsley replied we are willing to have that discussion and that is why I offered a decibel level to the Board today to be reasonable and start that discussion about this show. I don't think I would suggest or agree that my client put you folks in this position. The Chief denied our request for a permit and that is why we are here today.

Chairman Gatsas asked the stenographer to provide the statement that Atty. Tilsley made previously.

The stenographer answered, "we are willing to have that discussion and that is why I offered a decibel level to the Board today to be reasonable and start that

discussion about this show. I don't think I would suggest or agree that my client put you folks in this position."

Chairman Gatsas stated so the quote is that he doesn't believe his client put us in this position.

Mayor Baines asked can I just follow-up on one thing and then that will be my last comment on this. I offered these discussions weeks ago. I offered to sit down with the promoters to talk about acoustical engineering and to talk to other venues that were experiencing similar problems so that we could be better prepared to address whatever was coming because at that point in time we didn't know that Godsmack was going to be booked or what have you. That was not taken advantage of and the door to my office remains open for that kind of a discussion. I think concerts are good for this City. I enjoy going to concerts. I enjoy all different kinds of music. I was a former music educator and I can just about enjoy any form of music with certain caveats that I would like to put in there at another time. That is what disappoints me and I would say that publicly that we had a chance for that kind of a dialogue and I don't think we would be here tonight if we had that dialogue some time ago and I regret that.

Chairman Gatsas stated, your Honor, we are running into another public session here. Would it be all right to recess this meeting, call the other meeting to order and then recess that and bring this one back.

Mayor Baines asked would that fit the requirements of the public hearing.

Clerk Bernier answered yes.

Chairman Gatsas recessed the meeting.

Chairman Gatsas called the meeting back to order.

Alderman Vaillancourt stated I just want to make sure that members of the Committee, the Board and everybody in the City of Manchester realizes that when you are talking about decibels that 100 to 105 is not simply a 5% increase or to 108 is not simply 8% higher. It is much, much greater than that. It is exponential so when they are talking about willing to set a 108 level when the standard is 105 or 100 it is not jut 5% or 8% higher.

Chairman Gatsas asked, Atty. Tilsley do you want to address that.

Atty. Tilsley answered yes I do. Again, our research indicates that 108 is the standard for an outdoor amphitheater of this type. I am not suggesting that the

Mayor is incorrect. We would be happy to have that dialogue with the Board. We do have to be...that is what our research shows but certainly we would be happy to enter into that discussion. Certainly what we want to do is what other similarly situated auditoriums do. We are not looking for anything extra.

Alderman Pariseau asked, Mr. Tilsley, would your client accept conditions that this Committee may impose on the conduct of the concert, such as the decibel level.

Atty. Tilsley answered certainly decibel level, as I said, we are right now as we sit here offering...

Alderman Pariseau interjected I think 100 is even too high. I would like to...you know we have the airplanes flying over South Manchester and that is over 75 decibels and it is loud enough. I wouldn't want to see the sound of the concert go over 90 beyond the fence.

Atty. Tilsley responded at some point you muffle the level so much that the concert becomes impossible. You can't sell tickets for \$35 a head if people can't hear what is going on. I guess I can't say that my client will accept any decibel level that you set. Again, what we are willing to do is to accept the level that is consistent with other outdoor venues. Our research is that that is 108. If the Mayor thinks it is 105, we would accept 105 as long as it is consistent with what similarly situated venues do but if you set 75 and there is no venue in the country that has 75 outdoors I can't say that we are going to accept that.

Chairman Gatsas asked so what you are saying is that if there is a venue that has 75.

Atty. Tilsley answered I am talking about industry standards for similarly situated outdoor amphitheaters.

Alderman Pariseau asked what if we had a condition that the concert begin at 6 PM and end at 10 PM.

Atty. Tilsley answered for this particular concert, we have actually done something along those lines. We have already moved it from 11:00 PM to 10:30 PM as a curfew to get it over with a little bit earlier.

Alderman Pariseau asked starting at what time.

Atty. Tilsley answered 6 PM. Also for this concert we moved it. It was originally going to be a Sunday night and we moved it to Saturday night at some expense to

my client because he has a show Friday night and now has to do back to back shows but the thought being that this type of noise is more appropriate on a Saturday night as opposed to a Sunday night.

Alderman O'Neil stated it is great to hear that everybody is in agreement to get a sound engineer and an acoustical engineer involved today. Where was all of this discussion on July 23?

Atty. Tilsley replied as I said earlier I think that part of what we have here is a work in progress. We have a new venue and this is all about working the kinks out.

Alderman O'Neil responded there were kinks to work out July 23 on. Why today are we talking about...

Atty. Tilsley interjected that is something that my client has been working on since the show to get these people out there talking to our sound engineers about what we can do to try to contain the sound. Realistically, other than the decibel level some of the other sound containment things that we can do are probably of more of a long-term nature. We will certainly do whatever we can do now but most of the typical sound containment things like building fences or barriers or curtains are going to be a more long term project than short term project.

Alderman O'Neil asked are you saying then that acoustical engineers have been on site.

Atty. Tilsley answered they have been contacted. We have been trying to get them out on site.

Alderman O'Neil asked so they have not been on site and this has been over a month and you couldn't get an engineer on site.

Atty. Tilsley answered they have not been on site yet. I should say though that we have talked to our sound people and they have some suggestions as to how to design the sound system to have the sound coming down into the venue more than out into the City.

Chairman Gatsas asked who have you presented those findings to.

Atty. Tilsley answered which findings.

Chairman Gatsas asked the findings about shooting the sounds down. I guess Alderman O'Neil's question is it has been over a month and I guess the big question is why has nothing been presented since then.

Atty. Tilsley answered I think we are presenting it now. Part of it is to try to get these people out here to take a look at it. There has been a lot of issues going on around the whole series that we have been trying to deal with. These ideas about the sound are simply our internal people telling us ways that we can bring the carry of the sound down.

Chairman Gatsas asked are you saying that by September 15 you are going to have the problem resolved.

Atty. Tilsley answered what I am saying is that we are going to do whatever we can do to resolve it between now and then and that is one reason why I am offering you a decibel level because I can't sit here and say look we are just going to point a certain speaker at a certain angle and that will solve the problem. I don't have that information. If we do a decibel level and you folks...

Chairman Gatsas interjected let me just go a little further. If you were not denied this concert on September 16, you would have done nothing about the sound.

Atty. Tilsley responded I wouldn't agree with that. Certainly, we understand that we need to contain the sound in the long term because we can't have a situation where we have a large percentage of the City angry at my clients so certainly our long term goal was to bring this thing down and contain the sound as best we can.

Chairman Gatsas asked what makes you think that people in the City are angry at your client.

Atty. Tilsley answered all you have to do is read the paper or come to these meetings to see that there are people on both sides of the issue, Sir.

Chairman Gatsas asked you don't want to get into me reading the paper do you.

Atty. Tilsley answered you are asking me a question – what made you think people are angry. I have seen at this meeting people who are angry. I have also seen...

Chairman Gatsas interjected there are things that I read in the paper that made me very angry.

Atty. Tilsley stated there are also people who support the series. We don't want people to be angry and we will do what we can to prevent it.

Chairman Gatsas replied or correct it.

Atty. Tilsley responded or correct it.

Chairman Gatsas stated I haven't seen any correction on some of the things I read in the paper.

Atty. Tilsley stated I don't think there have been any shows since the July show.

Alderman Hirschmann asked the 90-decibel level that was offered to you, you are rejecting that.

Atty. Tilsley answered I don't believe that 90 decibels would be sufficient for a concert.

Alderman Hirschmann stated because I was ready to listen to Alderman Pariseau. He has been on this Board for 20 years or whatever but if you are not ready to work with us then I am really going to have a problem and I am not going to be able to help you either.

Atty. Tilsley replied I think we are ready to work with you.

Alderman Hirschmann responded well I think you have to commit to us and you have to say that you are going to work with Alderman Pariseau.

Atty. Tilsley replied absolutely but I can't sit here and say that 90 is going to do it.

Alderman Hirschmann stated I have a problem because this venue is an inner City venue. It is different than Great Woods and other places that have 100 foot pine trees around and we have a City to worry about. You just admitted that half of the City is mad at you but they are mad at me too and I have to work with them and I have to work with you and I am waiting for you to help me.

Atty. Tilsley replied again that is why we have at this time offered a decibel level which...

Alderman Hirschmann interjected it is not acceptable. 90, 90, 90...

Atty. Tilsley interjected I don't know of any other venue that allows 90 and I can't accept a level that is not going to...

Alderman Hirschmann interjected in industrial factories if it is over 85 decibels you have to wear earplugs Sir.

Atty. Tilsley replied again we are talking about standards in the industry.

Alderman Vaillancourt stated Mr. Sawyer is here and he knows a lot about decibels. He gave us a handout at a previous Aldermanic meeting and I have been looking for this website and I think the City Solicitor has been asking for this as well. I think we should refer back to this but there is a tremendous amount of information here that Mr. Sawyer imparted to us at the last meeting. I urge us all to...why don't we make an extra copy of this so that we can all have it again. The problem is simply this, once you get the decibel level down to a level like that, it is not worth having a concert because the joy of these concerts is the loud music. That is it simply.

Atty. Tilsley stated I am told by my client just to respond to Alderman Hirschmann's questions that 95 decibels at the property line would do it so we would accept 95 at the property line.

Alderman O'Neil stated I am ready to take action on this.

Alderman Levasseur stated I am not sure if we are deciding not to give them the permit because of loudness or because of the police report. The police made a report putting out specific grounds. I would caution this Board that if you are going to make a decision on a vote that you make the decision based on noise levels and not on any of the content based...what we saw in the report. I will say that I was embarrassed when I met a member of the band the other day. I went to the Godsmack concert and it is loud. I will tell you it is loud. It took me about a day to get my hearing back. They were good. There wasn't the profanity that you would think from Slipknot and all of this ballyhoo that everyone is talking about. I will tell you that I met the drummer of the band who is a very nice person and I think that any parent out here would have been proud to have this guy for a son because he is a very good person. He talked very nicely. He was a gentleman to us. He didn't have to talk to us at all. All they are is a bunch of kids that were banging on axes they call them, banging on their guitars. They were people who just played in their garage and made it big. When I talked to them about the censorship or the stopping of their band coming to Manchester, I was embarrassed to have to say that we would even be having this discussion based on the police report that I had read. The gentleman told me that they had toured the world twice and not only had they never been censored but they had never even been talked about. To say that I was from Manchester and an Alderman and such...

Chairman Gatsas interjected I don't think we are talking about censorship here.

Alderman Levasseur stated that is what the police report states and that is what I am worried about. When we are leaning towards a lawsuit that the taxpayers are going to have to be accountable for...

Chairman Gatsas replied we have legal counsel behind us that will give us the legal direction that we need to have.

Alderman Levasseur responded well I will just say that you better be real careful on what you base your decision on because you are setting this City up for a lawsuit and there are going to be a lot of angry people out there if they don't get to see this concert. You are not going to please everybody.

Chairman Gatsas recessed the meeting to meet with legal counsel.

Chairman Gatsas called the meeting back to order.

Chairman Gatsas stated after consultation with the City Solicitor, the Committee on Administration has obviously seen the desire of the concert promoter to begin negotiating and talking for what may be the best interest of the City and also the promoter. We are a little dismayed that it has taken this long to come to the table, but we will extend the courtesy for one day and we will allow you to sit down with the City Solicitor tomorrow to work up some of the guidelines that we have thought about and that he has thought about and meet again tomorrow at 4:30 PM so that we can render a decision and see if you are willing to participate with those guidelines.

Atty. Tilsley replied that is fine and I look forward to meeting with Atty. Clark and Atty. Arnold.

Chairman Gatsas recessed the meeting to August 28 at 4 PM.